

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE,)	
)	
Plaintiff and Respondent,)	
)	S026223
v.)	
)	
GREGORY SCOTT SMITH,)	
)	
Defendant and Appellant.)	Ventura County
)	Super. Ct. No. CR 27866

BY THE COURT:

MODIFICATION OF OPINION

The opinion in this case, filed on March 10, 2005 and appearing at 35 Cal.4th 334, is modified as follows:

(1) In the last full paragraph of 35 Cal.4th at page 355, after the citation “(*People v. Coleman, supra*, 48 Cal.3d at p. 149.),” the following is added: “We continue to hold that general evidence regarding a defendant’s mental state is not admissible in aggravation at the penalty phase. Here, by contrast, Dr. Hatcher’s testimony, when considered with the evidence regarding defendant’s bizarre behavior while committing the crime, provided evidence from which the jury could infer defendant acted with sexual sadism. This specific evidence of the motivation behind the killing was relevant as a circumstance of the crime.” The next sentence, beginning with the words, “In *People v. Edelbacher*,” will begin a new paragraph.

(2) The words and parentheses “(See generally *People v. Barnes* (2004) 122 Cal.App.4th 858 [19 Cal.Rptr.3d 229] review granted Dec. 15, 2004, S128931, which reviews the California decisions on profile evidence.)” in the second full paragraph of 35 Cal.4th at page 357 are deleted.

This modification does not affect the judgment.